



**SPECIAL PROVISIONS
FOR
MINNESOTA WAGE RATES**

**Dickinson County
HSIPX-086-1(8)--3L-30**

**Effective Date
February 19, 2013**

THE STANDARD SPECIFICATIONS, SERIES 2012, ARE AMENDED BY THE FOLLOWING MODIFICATIONS AND ADDITIONS. THESE ARE SPECIAL PROVISIONS AND THEY SHALL PREVAIL OVER THOSE PUBLISHED IN THE STANDARD SPECIFICATIONS.

120018.01 DESCRIPTION.

This specification covers wage rates solely for work performed in the State of Minnesota. The Iowa/Minnesota border is located at station 360+61.

120018.02 DEFINITIONS.

- A. Independent Truck Owner/Operator (ITO):** An individual, partnership, or principal stockholder of a corporation who owns or holds a vehicle under lease and who contracts that vehicle and the owner's services to an entity that provides construction services to a public works project.
- B. Laborer or Mechanic:** A worker in a construction industry labor class identified in or pursuant to Minnesota Rules 5200.1100, Master Job Classifications.
- C. Substantially In Place:** Mineral aggregate is deposited on the project site directly or through spreaders where it can be spread from or compacted at the location where it was deposited.
- D. Trucking Broker:** An individual or business entity, the activities of which include, but are not limited to: contracting to provide trucking services in the construction industry to users of such services, contracting to obtain such services from providers of trucking services, dispatching the providers of the services to do work as required by the users of the services, receiving payment from the users in consideration of the trucking services provided and making payment to the providers for the services.
- E. Trucking Firm/Multiple Truck Owner (MTO):** Any business entity that owns more than one vehicle and hires the vehicles out for services to brokers or contractors on public works projects.

120018.03 PAYROLLS AND STATEMENTS.

- A.** Payrolls records shall comply with FHWA-1273

- B. All payroll records must be accompanied with a completed and signed MN/DOT, 21658 - Statement of Compliance Form.
- C. At the end of each pay period, each contractor shall provide every employee, in writing, an accurate detailed earnings statement.
- D. If, after written notice, the prime contractor fails to submit its payroll reports and certification forms and those of any subcontractor, the department may implement the actions prescribed in Article 120018.13.

120018.04 WAGE RATES.

- A. The prime contractor is responsible to ensure that its workers and those of all subcontractors are compensated according to the U.S. Department of Labor (U.S. DOL) federal general decision(s) and the Minnesota Department of Labor and Industry (MN/DLI) state prevailing wage determination(s) incorporated into and found elsewhere in this contract, whichever is greater. All contractors shall pay each worker the required minimum total hourly wage rate for all hours worked on the project and for the appropriate classification of labor.
 - 1. Federal building, heavy and highway general decisions are specific to the county in which the construction work is being performed; a decision does not cross county or state lines. If a project extends into more than one county or state, the applicable wage decision for each county or state shall be incorporated into and found elsewhere in this contract.
 - 2. State highway and heavy wage determinations are specific to ten separate regions throughout the state of Minnesota. If a project extends into more than one region, the applicable wage decision for each region shall be incorporated into and found elsewhere in this contract. If this contract contains multiple highway and heavy wage determinations, there shall be only one standard of hours of labor and wage rates.
- B. Wage rates listed in the federal and/or state wage determination(s) contain two components: the hourly basic rate and the fringe rate; together they equal the total prevailing wage rate. A contractor shall compensate a worker at a minimum, a combination of cash and fringe benefits equaling the total prevailing wage rate.
- C. The applicable certified wage decisions incorporated into and found elsewhere in this contract remain in effect for the life of this contract. The wage decisions do not necessarily represent the workforce that can be obtained at the rates certified by the U.S. DOL or MN/DLI. It is the responsibility of the prime contractor and any subcontractor to inform themselves about local labor conditions and prospective changes or adjustments to the wage rates. No increase in this contract price shall be allowed or authorized due to wage rates that exceed those incorporated into this contract.
- D. A contractor shall not reduce a worker's private, regular rate of pay when the wage rate certified by the U.S. DOL or MN/DLI is less than the worker's normal hourly wage.
- E. From the time a worker is required to report for duty at the project site until the worker is allowed to leave the site, no deductions shall be made from the worker's hours for any delays of less than 20 consecutive minutes. In situations where a delay may exceed 20 consecutive minutes and the contractor requires a worker to remain on the premises or so close to the premises that the worker cannot use the time effectively for the worker's own purposes, the worker is considered "on-call" and shall be compensated in accordance with Article 120018.04, B, unless the worker is allowed or required to leave the project site.

- F. A contractor making payment to an employee, laborer, mechanic, worker, or truck owner-operator shall not accept a rebate for the purpose of reducing or otherwise decreasing the value of the compensation paid.
- G. Any employee who knowingly permits a contractor to pay less than the total prevailing wage or gives up any part of the compensation to which the employee is entitled may be subject to penalties.

120018.05 BONA FIDE FRINGE BENEFITS.

- A. A "funded" fringe benefit plan is one that allows the contractor to make irrevocable contributions on behalf of an employee to a financially responsible trustee, third person, fund, plan or program, without prior approval from the U.S. DOL. Types of "funded" fringe benefits may include, but are not limited to: pension, health and life insurance.
- B. An "unfunded" fringe benefit plan or program is one that allows the contractor to furnish an in-house benefit on behalf of an employee. The cost to provide the benefit is funded from the contractor's general assets rather than funded by contributions made to a trustee, third person, fund, plan or program. Types of "unfunded" fringe benefits may include, but are not limited to: holiday plans, vacation plans and sick plans.
- C. Credit toward the total prevailing wage rate shall be determined for each individual employee and is allowed for bona fide fringe benefits that:
 - Include contributions irrevocably made by a contractor on behalf of an employee to a financially responsible trustee, third person, fund, plan, or program;
 - Are legally enforceable;
 - Have been communicated in writing to the employee; and
 - Are made available to the employee once he/she has met all eligibility requirements.
- D. No credit shall be allowed for benefits required by federal, state or local law, such as: worker's compensation, unemployment compensation, and social security contributions.
- E. Upon request from the MN/DLI or the Department, the prime contractor shall promptly furnish copies of fringe benefit records for its workers and those of all subcontractors, along with other records, deemed appropriate by the requesting agency to determine compliance with these contract provisions.
- F. In addition to the requirements set forth in Article 120018.05, C, it is the responsibility of the prime contractor and any subcontractor to inform themselves about other federal and state fringe benefit regulations that may be applicable to this contract.
- G. Contractors shall submit a completed and signed MN/DOT, 21658 - Statement of Compliance Form, identifying any fringe contributions made on behalf of a worker. The form must be submitted in accordance with Article 120018.03, B.
- H. Pursuant with Minnesota Statute 181.74, Subdivision 1, a contractor that is obligated to deposit fringe benefit contributions on behalf of its employees into a financially responsible trustee, third person, fund, plan, or program and fails to make timely contributions may be guilty of a gross misdemeanor. A contractor found in violation of the above-mentioned statute shall compel the department to take such actions as prescribed in Article 120018.13.

120018.06 OVERTIME.

- A. A contractor shall not permit or require a worker to work in excess of 40 hours per week unless the worker is compensated at a rate not less than 1 1/2 times the basic hourly rate as determined by the United States Secretary of Labor.
- B. A contractor shall not permit or require a worker to work longer than the prevailing hours of labor unless the worker is paid for all hours in excess of the prevailing hours at a rate of at least 1 1/2 times the hourly basic hourly rate of pay. The prevailing hours of labor is defined as not more than 8 hours per day or more than 40 hours per week.
- C. In addition to the requirements set forth in Article 120018.06, it is the responsibility of the prime contractor and any subcontractor to inform themselves about other federal and state overtime regulations that may be applicable to this contract.

120018.07 LABOR CLASSIFICATIONS.

All contractors shall refer to the federal general decision or the state wage determination incorporated into and found elsewhere in this contract to obtain an applicable job classification. Workers must be classified and compensated for the actual work performed regardless of the worker's skill level. The prime contractor shall ensure that all contractors adhere to the following requirements:

- A. Prior to performing work under this contract, all contractors shall review the federal general decision and complete a U.S. DOL, SF-1444 - Request for Authorization of Additional Classification and Wage Rate Form for any labor classification missing from the decision and submit it to the Project Engineer.
- B. If a contractor cannot determine an appropriate job classification, state law requires that the worker be assigned a job classification that is the "same or most similar". Contractors should refer to the Master Job Classification List to obtain an applicable labor classification. Clarification regarding labor classifications should be directed to the Project Engineer.

120018.08 INDEPENDENT CONTRACTORS, OWNERS, SUPERVISORS AND FOREMAN.

- A. An independent contractor performing work as a laborer or mechanic is subject to the contract prevailing wage requirements for the classification of work performed and shall adhere to the requirements established in Articles 120018.03 through 120018.07. In order to ensure compliance, the department may examine the subcontract agreement to determine if the bid price submitted covers the applicable prevailing wage rate for the number of hours worked, along with other records, deemed appropriate by the department.
- B. Pursuant with state regulations, owners, supervisors and foreman performing work under the contract shall be compensated in accordance with Article 120018.04. Furthermore, the prime contractor and any subcontractor shall adhere to the requirements established in Articles 120018.03, 120018.05, 120018.06, and 120018.07.
- C. Pursuant with federal regulations, the contract labor provisions do not apply to owners, supervisors or foreman whose duties are primarily associated with bona fide administrative, executive or clerical positions. These individuals are not deemed to be laborers or mechanics. However, working owners, supervisors and/or foreman who devote more than 20% of their time during a workweek to laborer or mechanic duties are considered laborers or mechanics for the time so spent and are subject to the requirements established in Articles 120018.03 through 120018.07.

120018.09 APPRENTICES, TRAINEES AND HELPERS.

- A.** An apprentice is not subject to the federal and/or state wage decisions incorporated into and found elsewhere in this contract, provided the contractor can demonstrate compliance with the following:
- The apprentice is performing the work of his/her trade,
 - The apprentice is registered with the U.S. DOL Bureau of Apprenticeship and Training or MN/DLI Division of Voluntary Apprenticeship,
 - The apprentice is compensated according to the rate specified in the program for the level of progress, and
 - The ratio of apprentices to journeyman workers on the project is not greater than the ratio permitted for the contractor's entire work force under the registered program.
- B.** A trainee is not subject to the federal general decision incorporated into and found elsewhere in this contract, provided the contractor can demonstrate compliance with the following:
- The trainee is performing the work of his/her trade,
 - The trainee is registered with the U.S. DOL Employment and Training Administration,
 - The trainee is compensated according to the rate specified in the program for the level of progress, and
 - The ratio of trainees to journeyman workers on the project is not greater than the ratio permitted under the program.

All hours worked in excess of the prescribed hours allowed under the program and/or this contract shall be paid at the journeyman wage rate incorporated into and found elsewhere in this contract.

A trainee is not exempt under state law; the contractor shall assign the trainee a job classification that is the "same or most similar" and compensate the trainee for the actual work performed regardless of the trainee's skill level, unless the trainee is:

- Employed and registered in a bona-fide apprenticeship program; or
 - Employed in the first 90 days of probationary employment as an apprentice, is not registered in the apprenticeship program, but has been certified by the proper government authorities to be eligible for probationary employment as an apprentice.
- C.** A helper may perform work only if the helper classification is specified and defined in the federal general decision incorporated into and found elsewhere in this contract or is approved pursuant to the federal conformance procedure. A helper is not exempt under state law; a contractor shall assign the helper a job classification that is the "same or most similar" and compensate the helper for the actual work performed regardless of the helper's skill level.
- D.** If a contractor fails to demonstrate compliance with the terms established in Article 120018.09, the contractor shall compensate the worker not less than the applicable total prevailing wage rate for the actual work performed.

120018.10 EMPLOYEE INTERVIEWS.

At any time the prime contractor shall permit representatives from the U.S. DOL, FHWA, MN/DLI, or the Department to interview its workers and those of any subcontractor during working hours on the project.

120018.11 TRUCKING / OFF-SITE FACILITIES.

- A.** The prime contractor is responsible to ensure that its workers and those of all subcontractors are compensated in accordance with the federal wage decision incorporated into and found elsewhere in this contract for the following work duties:

1. The processing or manufacturing of material, including the hauling of material to and from an immediately adjacent, dedicated off-site facility.
 2. The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project.
- B.** The prime contractor is responsible to ensure that its workers and those of all subcontractors, are compensated in accordance with the state wage determination incorporated into and found elsewhere in this contract for the following work duties:
1. The processing or manufacturing of material, including the hauling of material to and from a prime contractor's material operation that is not a separate commercial establishment.
 2. The processing or manufacturing of material, including the hauling of material to and from an off-site material operation that is not considered a commercial establishment.
 3. The hauling of any or all stockpiled or excavated materials on the project work site to other locations on the same project even if the truck leaves the work site at some point.
 4. The delivery of materials from a non-commercial establishment to the project and the return haul.
 5. The delivery of materials from another construction project site to the public works project and the return haul, either empty or loaded. Construction projects are not considered commercial establishments.
 6. The hauling required to remove any materials from the project to a location off the project site and the return haul, either empty or loaded from other than a commercial establishment.
 7. The delivery of mineral aggregate materials from a commercial establishment, which is deposited "substantially in place" and the return haul, either empty or loaded.
- C.** The work duties prescribed in Articles 120018.11, A and B do not represent all possible hauling activities and/or other work duties that may be performed under this contract. It is the responsibility of the prime contractor to inform itself and all subcontractors about other applicable job duties that may be subject to this contract labor provisions.
- D.** A contractor acquiring trucking services from an ITO, MTO and/or Truck Broker to perform and/or provide "covered" hauling activities shall comply with the payment of the certified state truck rental rates, which are incorporated into and found elsewhere in this contract. Each month, in which hauling activities were performed under this contract, the prime contractor and all subcontractors shall submit a MN/DOT, TP-90550 - Month-End Trucking Report and MN/DOT, TP-90551 - Statement of Compliance Form, along with each ITOs, MTOs and/or Truck Brokers reports to the department. The specifications regarding the dates for submission can be found near the bottom of the MN/DOT, TP-90551 - Statement of Compliance Form.
- E.** A Truck Broker contracting to provide trucking services in the construction industry may charge a reasonable broker fee to the provider of trucking services. The prime contractor and any subcontractor contracting to receive trucking services shall not assess a broker fee.
- F.** A contractor with employee truck drivers shall adhere to the requirements established in Articles 120018.03 through 120018.07.

- G. If after written notice, the prime contractor fails to submit its month-end trucking reports and certification forms and those of any subcontractor, MTO and/or Truck Broker, the Department may take such actions as prescribed in Article 120018.13.

120018.12 CHILD LABOR.

- A. No worker under the age of 18 is allowed to perform work on construction projects.
- B. In accordance with state law, a worker under the age of 18, employed in a corporation totally owned by one or both parents that is supervised by the parent(s), may perform work on construction projects. However, if this contractor is subject to the federal Fair Labor Standards Act, a worker under the age of 18 is not allowed to perform work in a hazardous occupation.
- C. To protect the interests of the department, the project engineer may remove a worker that appears to be under the age of 18 from the construction project until the contractor or worker can demonstrate proof of age and compliance with all applicable federal and/or state regulations.

120018.13 NON-COMPLIANCE AND ENFORCEMENT.

- A. The prime contractor shall be liable for any unpaid wages to its workers or those of any subcontractor, ITO, MTO and/or Truck Broker.
- B. If it is determined that a contractor has violated federal and/or state prevailing wage laws, or any portion of this contract, the department may implement, after written notice, one or more of the following sanctions:
 - 1. Withhold or cause to be withheld from the prime contractor such amounts in considerations or assessments against the prime contractor, whether arising from this contract or other contract with the department.
 - 2. The department may take the prosecution of the work out of the hands of the prime contractor, place the contractor in default and terminate this contract for failure to demonstrate compliance with these provisions.
- C. Any contractor who violates the state prevailing wage law is guilty of a misdemeanor and may be fined not more than \$300 or imprisoned not more than 90 days or both. Each day that the violation continues is a separate offense.
- D. All required documents and certification reports are legal documents; willful falsification of the documents may result in civil action and/or criminal prosecution and may be grounds for debarment proceedings.

120018.14 METHOD OF MEASUREMENT AND BASIS OF PAYMENT.

Compliance with these Special Provisions shall be incidental to other work on the Contract.